THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16441 OF 2006
AND
WRIT PETITION NO.18032 OF 2006

DATED: 22nd NOVEMBER, 2006.

Between :

Kakatiya University, rep. by its Registrar,
Vidyaranyapuri, Hanamkonda, Warangal
District. .. Petitioner

And

1. Employees' Provident Fund Organisation,
Rep. by its Commissioner, Barkatpura,
Hyderabad-500 029., and 4 others. .. Respondents

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COMMON ORDER :

Kakatiya University, Hanamkonda, Warangal District is the petitioner in these two writ petitions which are filed aggrieved by the proceedings initiated under the provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the Act') for recovery of arrears towards PF contributions in respect of casual workers and daily wage workers including temporary employees working in the University.

The petitioner University which was established under the Kakatiya University Act, 1991, is governed by the provisions of A.P. Universities Act, 1991. In the affidavit filed in support of the writ petitions, it is stated that to meet the administrative requirements the University has been engaging the service of casual workers and daily wage workers from time to time and the said appointments are purely temporary in nature. As clarified by the Government of A.P., unless the services of the above said employees are regularized in terms of G.O.Ms.No.212, Finance, dated 22-4-1994, they are not eligible for getting minimum pay scale and they are not also entitled for provident fund benefits. It was made clear by the Government of A.P. by letter dated 6-3-1998 that the University shall not make PF contribution in respect of daily wage employees as they are not regular employees. As per Section 49 of A.P. Universities Act, 1991 read with the

instructions of the Government of A.P. vide letter dated 7-11-2003, the petitioner University shall not take any decision on any issue of financial implications without obtaining specific approval of the Government.

In spite of the above directions, to avoid any unpleasant action from the officials of the Employees Provident Fund Organisation, the petitioner University started paying employer's contribution of PF in respect of casual and daily wage workers from the year 2004 onwards subject to approval of the Government of A.P.

While so, the respondents made a demand for alleged arrears of PF contributions in respect of casual and daily wage workers working with the University from the year 1991. Though the petitioner University had explained to the respondents that they cannot be made liable to pay the PF contributions, without appreciating the same in the correct perspective, the Assistant Provident Fund Commissioner in exercise of powers under Section 7-A of the Act passed an order determining the liability of the petitioner University for the period from January, 1991 to December, 2003 in respect of casual workers and daily wage workers in the hostels of the petitioner University. As per the said order, a sum of Rs.7,38,617/- is payable towards arrears of both employer's and employees contribution apart from a sum of Rs.3,85,420/- towards interest under Section 7-Q of the Act. The petitioner was also called upon to pay further interest at the rate of 12% per annum from the dates they became due to the date of actual remittance. The said order was communicated to the petitioner University by proceedings dated 1-5-2006. Pursuant thereto, the Enforcement Officer issued a prohibitory order dated 17-7-2006 under Section 8-F (3) of the Act prohibiting the State Bank of Hyderabad from releasing a sum of Rs.11,24,037/- from the account of the petitioner University and to transfer the said money to the 3rd respondent. Aggrieved by the same, the petitioner University filed W.P.No.16441 of 2006.

During pendency of the above said writ petition, a fresh order dated 14-8-2006 has been passed by the Assistant Provident Fund Commissioner under Section 7-A of the Act determining the liability of the petitioner University towards the arrears of Provident Fund in respect of other employees engaged by the petitioner University on daily wage basis for the period from January, 1991 to December, 2003. A sum of Rs.1,43,00,539/- was assessed as due towards PF contributions apart from a sum of Rs.74,47,880/- towards the interest payable under Section 7-Q of the Act. The said order dated 14-8-2006 is under challenge in W.P.No.18032 of 2006.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioner contended that the provisions of the Act cannot be extended to the temporary employees of the University who are working on daily wages and therefore the impugned orders dated 1-5-2006 and 14-8-2006 made under Section 7-A of the Act determining the liability of the petitioner University for payment of PF contributions in respect of the said employees is arbitrary and illegal.

The learned Counsel vehemently contended that the impugned orders and the consequential coercive steps initiated by the respondents are contrary to Section 49 of the A.P. Universities Act, 1991 as well as the instructions issued by the Government of A.P. from time to time according to which the petitioner University cannot take any decision on any issue involving financial implications.

The learned Counsel appearing for the respondents, on the other hand, contended that the impugned orders which were passed after conducting a detailed enquiry as contemplated under the provisions of the Act are in accordance with law and do not warrant any interference.

At the outset, it is to be noted that the orders impugned in both the writ petitions which are made under Section 7-A of the Act are

appealable under Section 7-I of the Act. Since the impugned orders can neither said to be without jurisdiction nor in violation of the principles of natural justice, as rightly contended by the learned Counsel for the respondents, without exhausting the alternative remedy available under the Statute, the petitioner cannot maintain these writ petitions.

However, the learned Counsel for the petitioner sought to contend that since the very applicability of the provisions of the Act to the temporary employees engaged by the University is under challenge, the existence of the alternative remedy is not a bar to grant the relief under Article 226 of the Constitution of India.

The learned Counsel for the petitioner while pointing out that as per Section 16 (1) (b) of the Act the provisions of the Act are made inapplicable to all the establishments under the control of the Central Government or State Government, contended that the petitioner University though is an autonomous body, since it is fully dependent on the funds released by the State Government in the form of block grant every year the exemption under Section 16 (1) of the Act is attracted. The learned Counsel submitted that no amount is being released by the State Government to cover the employer's contribution towards provident fund of the casual labour and daily wage workers engaged by the University and that apart, the State Government by letter dated 6-3-1998 has specifically instructed that the casual employees of the Universities are not entitled for PF benefits on par with the regular employees. Hence, the petitioner University cannot be fastened with the liability under the impugned orders and the same being ex facie illegal are liable too be set aside by this Court under Article 226.

In support of his submissions, the learned Counsel while referring to the definitions of 'Basic Wages', 'Employee' and 'Exempted Establishment' under Section 2(b), Section 2(f) and Section 2(fff) under the Act placed reliance upon the decisions of the High

Courts of Madras and Karnataka reported in R.C.S.C.D. OF MARY HELP OF CHRISTIANS v. R.P.F. COMMR.[1] and JYOTHI HOME IND. ETC. v. R.P.F.C & ORS.[2]

As can be seen from the counter-affidavit filed on behalf of the respondents, the Hostels of petitioner University are covered by the provisions of the Act w.e.f. 28-8-1999 provisionally. The petitioner University has been complying with the provisions of the Act and the Schemes framed thereunder from the date of coverage and has been remitting the PF contributions and has been submitting the statutory returns regularly. However, the daily wages and casual workers engaged in the hostels right from the year 1991 were not enrolled by the University and on a complaint received by the Staff and Workers Federation of the University an enquiry under Section 7-A of the Act was initiated and after affording adequate opportunity to the petitioner University and after conducting due enquiry the order impugned in W.P.No.16441 of 2006 was passed under Section 7-A of the Act determining the liability of the petitioner University for the period from January, 1991 to December, 2003.

The specific plea in the counter-affidavit that though the petitioner University has been complying with the provisions of the Act in respect of 49 employees, it failed to enroll 61 casual and daily wage workers who have been working from 1991 onwards has not been denied by the petitioner. In the circumstances, the contention of the petitioner that the Act is not at all applicable to the petitioner University cannot be accepted. Since admittedly the petitioner has been complying with the provisions of the Act so far as the regular employees are concerned, its claim for exemption under Section 16 (1) of the Act does not appear to be tenable.

Section 49 of the A.P. Universities Act, 1991 on which the learned Counsel for the petitioner placed much reliance upon runs as under :

"49. The university shall not, without the prior approval of the Government, divert earmarked funds for other purposes or upgrade any post or revise the scales of pay of its staff of implement any scheme which involves any matching contribution from the Government or create a post or posts resulting in a recurring liability on the Government either immediately or in future.

Provided that of the existing teaching purposes the Executive Council may authorise the creation and filling up of posts of teachers for a period not exceeding one year but any such post or posts shall not be continued or created afresh for any period beyond the said period of one year without the prior approval of the Government."

It is true that the above provision prohibits the petitioner University from diverting the earmarked funds for other purposes including implementation of any scheme involving matching contribution from the Government resulting in recurring liability on the Government. However, I am unable to hold that by virtue of the said provision the petitioner University can disown its statutory liability under the Act. Section 49 of the A.P. Universities Act, 1991, as can be seen, only prohibits diversion of the earmarked funds, but does not grant any exemption to the petitioner University from complying with the provisions of the Act or any other statute.

As a matter of fact, sub-section (2) of Section 17 empowers the Central Government to exempt any class of establishments from the operation of the Act under the circumstances specified thereunder. That apart, under Section 17 of the Act the State Government is also competent to exempt any establishment from operation of the provisions of any scheme under the Act either prospectively or retrospectively. It appears that though the petitioner University sought for such exemption no order has been passed to that effect by the State Government. The instructions issued by the State Government to stop the payment of PF contribution in respect of daily wage employees on the ground that their services are not regularized under G.O.Ms.No.212, dated 22-4-1994 cannot be taken into consideration for determining the liability of the petitioner University under the Act.

The only question that requires consideration is whether such employees engaged on temporary basis fall within the definition of 'employee' under Section 2 (f) of the Act. Such a question can be decided only on appreciation of the material made available to the competent authority under the Act in the light of the other relevant provisions of the statute. In the circumstances, the validity/sustainability of the orders impugned cannot be enquired into in a writ proceeding under Article 226 of the Constitution of India since the same requires consideration of various disputed questions of fact. Hence, the proper course for the petitioner is to avail the alternative remedy of appeal as available under the Act. If any such appeals are preferred, the same shall be considered and decided on merits uninfluenced by any of the observations made/findings recorded by this Court.

Accordingly, granting leave and liberty to the petitioner to work out the remedy of appeal, both the Writ Petitions are disposed of. However, having regard to the facts and circumstances of the case, the respondents are directed not to take any coercive steps against the petitioner for a period of eight (8) weeks from today provided the petitioner deposits 1/4th of the amounts determined under the impugned orders within a period of four weeks from today. No order as to costs.

G. ROHINI, J.

Dt. 22-11-2006
gbs

[1] 2000 (3) LLJ 412

[2] 1994 (1) LLJ 49